

# SAUMAchat



THE VOICE OF THE UMA



## THE WORLD IS EXPLODING

It feels like only yesterday when we sent out our Christmas and New Year's wishes, and now we are already approaching the second quarter of 2011.

It seems like the world around us is exploding. More and more people are focused on claiming their individual rights throughout all spheres of life: from political affiliation, to a right to freedom of speech, and certainly in South Africa the big drive towards the protection of the consumer, evident from the latest publication of the Consumer Protection Act (see the article on page 2 of this newsletter).

The recent floods across the world, including the floods all over South Africa did not make it any easier during the last quarter. The insurance industry really had to prove its worth by having to act speedily and having disaster recovery plans in place for catastrophe areas. It is during these times that the consumer, and business owner really appreciate our fraternity and the value we add and protection we offer against huge financial and personal losses.

Whilst all the recent unforeseen events keep us fairly busy, the insurance industry is definitely still actively involved in the processing and implementation of various pieces of legislation and industry legal and compliance requirements, including the whole drive towards education and skills development throughout the industry. There are a number of huge projects in which the industry is currently involved and we as an association are proud to participate in most of these projects representing the Underwriting fraternity. We will keep you posted on the various developments, including upcoming events through our monthly circulars, our website and our upcoming conference.

**“Reinsurance plays a very significant role in providing a very competitive and cost-effective capital position...”**

We hope you enjoy this edition of the SAUMA chat, and we invite you to respond with your opinions and suggested topics.

We look forward to seeing you at our

upcoming conference and we once again pledge our continued support to our members and the industry.

*PS: We hope you are all studying hard.*

**Tersia Davey**

## Why UMAs need reinsurance

As we all know, very talented individuals who offer highly skilled underwriting and claims management ability to their insurance paper providers dominate the UMA environment. The very core of the existence of the UMA industry is therefore driven by the fact that the skills resident in the underwriting agencies are not available within the entity providing the insurance paper.

However, any great underwriting portfolio could quickly suffer the ravages of an accumulation of individual large losses or alternatively a major catastrophic event brought on by such perils as flood, hailstorm and/or earthquake. The very essence of reinsurance is to remove these uncontrollable exposures so that the overall result is not unduly affected in any one particular underwriting or financial year.

It is also evident that most underwriting managers purchase proportional and non-proportional reinsurance. The former is either structured on a quota share or surplus basis, and it is vital to the underwriting agency that they consistently produce an acceptable incurred loss ratio as this is definitive in the setting of the ceding commission as well as the profit commission under a proportional treaty. These commissions are sacrosanct from the point of view that the more acceptable the incurred loss ratio is to reinsurers the higher the ceding and profit commission percentages. This creates the necessary arbitrage to ultimately create an acceptable economic value proposition to the underwriting agency.

**It is therefore vital that all underwriting agencies consider having their respective portfolios accurately modelled to understand the financial and economic implications of adopting various different reinsurance strategies. This will ultimately guide the respective underwriting agency into selecting the most optimal reinsurance structure that will provide a consistent and equitable return in a strategic sense.**

### RISK-BASED CAPITAL

What is also becoming very important is the changing legislative environment whereby risk-based capital is the strategic order of the day under the new SAM regime.

Whether an underwriting agency is structured on a cell captive or traditional basis the pressure to allocate the requisite capital to the UMA is one of considerable importance to the overall return on equity for the underwriting agency.

Reinsurance plays a very significant role in providing a very competitive and cost-effective capital position for the underwriting agency to the extent that if the correct structure is put in place the capital allocation to the underwriting agency reduces substantially.

**Source: Iain Macindoe  
Chief Executive Officer: Willis  
Re (Pty) Limited**

# CPA HAS BIG IMPACT ON SHORT-TERM INSURANCE INDUSTRY

**The Consumer Protection Act (CPA), which comes into effect on 1 April 2011 will impact on the short-term insurance industry in South Africa, both directly and indirectly, in a major way.**

The purpose of the CPA is to empower consumers, by establishing and enforcing higher standards of consumer protection and helping to achieve a more equal footing for previously disadvantaged consumers.

The CPA applies to any goods and services.

Services include services provided by insurance companies, but the Short-term Insurance Act (the Act) is excluded from the CPA's ambit, provided that the Act is in line with the relevant consumer protection measures within 18 months from the 1st of April 2011.

When one takes into account that there is an Ombudsman for Short-term Insurance (Ombudsman) relating to the insurance industry, as well as the Policyholder Protection Rules (the Rules), it would appear that the short-term insurance industry is largely compliant with the objectives of the CPA. It appears that that is way the Act is currently exempt from the provisions of the CPA.

## KEY PROVISIONS

Insurers must ensure that they comply, inter alia, with the following key provisions of the Rules:

- Exclusions in the insurance policy must be drawn to the consumer's (insured's) attention. Exclusion clauses will be measured against whether a "reasonable man" would have expected the exclusion

and the surrounding factors when the contract was concluded.

- The terms of the insurance policy must be in writing, expressed in an easy to understand language.
- Insurers are not allowed to take advantage of those who are unable to understand the terms of the insurance policy through disability, ignorance, illiteracy, or inability to understand the language of the insurance policy.

It appears that as long as the Ombudsman stays cognisant of consumer rights in his decisions, and the Rules are enforced and amended in order to protect the consumer's rights and interests as proposed in the CPA, insurers need only ensure that they meet the requirements of the Act.

## TWO MAJOR EFFECTS

The CPA will affect the short-term insurance industry in two ways, namely:

- In respect of the relationships between the insurer and the insured, where the insurer will be the supplier and the insured the consumer; and
- The relationship between the insurer and third parties with whom the insured has a business relationship or dealings, in which situation the insurer will be the supplier and the third party the consumer.

As far as the above-mentioned relationship between the insurer and the third party consumers is concerned, the potential liability of insureds in terms of the CPA, relating to goods and/or services provided by them, will change and increase significantly once the CPA comes into force and effect. That will inevitably have the following effect:

- That there may be more claims by consumers against the insured.
- That there may be more claims by the insured against the insurers.
- That the insurance premiums paid by the insured to the insurers will increase.

## VITAL STEPS

In these circumstances, the insurers have to do the following as soon as possible, and preferably before the CPA comes into force and effect:

- Taking into account the impact of the CPA on insureds.
- Reconsider the wordings of their insurance policies.
- Advise the insured/brokers/intermediaries to word indemnity clauses and/or disclaimers in such a way so that they accord with the provisions of the CPA.
- Make insured aware of the extended

exposure faced by them relating to goods sold and delivered, and services provided by them, as a result of the provisions of the CPA.

- Consider providing wider cover in respect of product liability, with appropriate increased insurance premiums, for such extended liability exposure that the insured will face in terms of the CPA.

As the CPA introduces extended liability on the part of suppliers of goods and services, suppliers should ensure that, as far as is legally possible, they obtain suitable insurance coverage for such extended liability.

The CPA has introduced the concept of "strict liability" and that needs to be taken into account in obtaining suitable insurance cover.

Section 61 of the CPA provides that the producer, importer, distributor and retailer are jointly and severally liable by any harm caused by defective goods. Negligence no longer has to be proved by the consumer.

## MORE VULNERABLE

Suppliers of goods and services are much more vulnerable under the CPA and it is anticipated that, as far as is legally possible, they obtain suitable insurance cover for such extended liability.

The introduction of the CPA includes the possibility of class actions and that also needs to be taken into account in obtaining suitable insurance cover.

Section 56 of the CPA deals with an "implied warranty of quality", which makes a supplier legally liable for the rectification of return of defective goods.

## TAKE STOCK

All told, everyone involved in the short-term insurance industry needs to urgently, thoroughly and carefully "take stock" of the significant impact that the CPA will have on the short-term insurance industry and take the appropriate steps to take cognisance of and deal with that:

- Relating to the relationship between the insurer and the insured; and
- The relationship between the insured and the consumer.

**Source: Tony Canny  
Eversheds Director**





# NEW ACT

## REGULATES LARGE EVENTS

The Safety at Sports and Recreational Events Act, Act No 2 of 2010, came into effect on 2 August 2010.

The Act is an attempt by the state to properly regulate major sporting and other events in the country. These events include sporting, entertainment, exhibitional, religious and similar events hosted at a stadium, venue or along a route.

The Act places the ultimate responsibility on a controlling body, an event organiser or a stadium/venue owner of ensuring that measures are in place to ensure the physical safety and security of persons and property at an event.

### DUTIES

Event organiser must ensure, amongst others, that:

- A safety officer is appointed for the event;
- A written safety plan is prepared;
- The measures contained in the safety plan are implemented; and
- The local police station is informed.

### SAFETY PLAN

The safety plan must detail amongst others:

- Safety measures;
- Security measures;
- Crowd management measures;
- Motor vehicle parking arrangements; and
- Emergency medical measures.

Other issues include:

- Risk assessment
- Safety capacity
- Expected spectator profile and attendance
- Ablution facilities
- Control of liquor
- Proactive and reactive fire measures
- Access and egress control
- Emergency evacuation procedures

They must ensure that public liability insurance is in place.

Whilst areas of the Act that can be criticised and need to be clarified, it will go a long way to ensuring that local and international sporting and other events are hosted effectively and safely.

Source: Peter Darroll  
SAUMA Director

SAUMA conference



Face

the future

Conference

08h00 to 14h00

3 June 2011

Di Data Campus  
Ebony Auditorium  
Wanderers Building  
Cnr Sloane and Main Roads  
Bryanston

Save

the date

SAUMA

SAUMA Managers Reg. No. 1999/025689/08

